United Nations A/C.3/73/2

General Assembly

Distr.: General
11 October 2018

Original: English

Seventy-third session
Third Committee

Exchange of letters between the Chair of the Third Committee and the Assistant Secretary-General in charge of the Office of Legal Affairs

Note by the Secretary-General

The Secretary-General has the honour to transmit to the Third Committee the letter dated 10 October 2018 from the Chair of the Third Committee addressed to the Under-Secretary-General for Legal Affairs, the Legal Council (see annex I), and the letter dated 10 October 2018 from the Assistant Secretary-General in charge of the Office of Legal Affairs addressed to the Chair, which was sent in reply (see annex II).

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Annex I

Letter dated 10 October 2018 from the Chair of the Third Committee addressed to the Under-Secretary-General for Legal Affairs, the Legal Counsel

I have the honour to inform you that at its 14th meeting, held today, 10 October 2018, the Third Committee of the General Assembly took a decision to request a legal opinion on the proposal of the Republic of Burundi on the following questions:

> What are the legal basis for the inclusion of the Commission of Inquiry on Burundi on the list of the Third Committee of the General Assembly of special mandate holders mandated to present a report to the Assembly at its seventy-third session; and the legal basis for the dialogue of the aforementioned Commission with the Committee in view of paragraph 22 of Human Rights Council resolution 39/14 of 28 September 2018.

The decision was adopted by a recorded vote.

(*Signed*) Mahmoud **Saikal**
Ambassador
Chair, Third Committee

Annex II

Letter dated 10 October 2018 from the Assistant Secretary-General in charge of the Office of Legal Affairs addressed to the Chair of the Social, Humanitarian and Cultural Committee (Third Committee)

I refer to your letter dated 10 October 2018, in which you mention that the Social, Humanitarian and Cultural Committee (Third Committee) of the General Assembly took a formal decision at its 14th meeting, held on 10 October 2018, to request that the United Nations Legal Counsel give a legal opinion on the following question:

> What are the legal basis for the inclusion of the Commission of Inquiry on Burundi on the list of the Third Committee of the General Assembly of special mandate holders mandated to present a report to the Assembly at its seventy-third session; and the legal basis for the dialogue of the aforementioned Commission with the Committee in view of paragraph 22 of Human Rights Council resolution 39/14 of 28 September 2018.

As the United Nations Legal Counsel is travelling on official business, I am responding as the Officer-in-Charge of the Office of Legal Affairs.

First question

The first question is formulated as follows: "What are the legal basis for the inclusion of the Commission of Inquiry on Burundi on the list of the Third Committee of the General Assembly of special mandate holders mandated to present a report to the Assembly at its seventy-third session".

The Human Rights Council established the Commission of Inquiry on Burundi for a period of one year by its resolution 33/24 of 30 September 2016 entitled "Situation of human rights in Burundi". The Human Rights Council subsequently decided, by its resolution 36/19 of 29 September 2017 entitled "Renewal of the mandate of the Commission of Inquiry on Burundi", to extend for a period of one year the mandate of the Commission, and further decided, by its resolution 39/14 of 28 September 2018 entitled "Situation of human rights in Burundi", to extend the mandate of the Commission "until it presents a final report to the Human Rights Council during an interactive dialogue at its forty-second session and to the General Assembly at its seventy-fourth session".

The Commission is currently composed of the following members: Mr. Doudou Diène (Senegal), Ms. Lucy Asuagbor (Cameroon) and Ms. Françoise Hampson (United Kingdom of Great Britain and Northern Ireland).

The document entitled "Provisional list of special procedure mandate holders and other experts scheduled to make presentations to the Third Committee of the General Assembly at its seventy-third session", dated 2 October 2018, which is posted on the website of the Third Committee, contains the following entry under the heading "24 October 2018 (pm) Item 74 (a–d): Human rights": "Chair of the Commission of Inquiry on Burundi (Mr Doudou DIENE) (A/HRC/RES/36/19, A/HRC/RES/39/14)".

We note that the Third Committee, at its 1st meeting held on 2 October 2018, considered this list and decided to invite the special procedures mandate holders and other experts on that list to present their reports and interact with the Committee, with the exception of the Chair of the Commission of Inquiry on Burundi and the Independent Expert on the situation of human rights in Somalia, and decided to revert to this matter at a later stage.

In preparing the document entitled "Provisional list of special procedure mandate holders and other experts scheduled to make presentations to the Third Committee of the General Assembly at its seventy-third session", dated 2 October 2018, the Secretariat has relied on the relevant resolutions of the General Assembly and the Human Rights Council and the established practice as described below.

The relevant General Assembly resolutions include resolution 58/316 of 1 July 2004 entitled "Further measures for the revitalization of the work of the General Assembly". By this resolution, the Assembly decided that "[t]he practice of interactive debates and panel discussions shall be utilized or expanded, as appropriate, by all Main Committees so as to enhance informal, in-depth discussions and to bring together experts from various fields without prejudicing the progress of the substantive work of the Main Committees" (annex, para. 3 (c)).

The note by the Secretariat entitled "Organization of the work of the Third Committee" (A/C.3/73/L.1/Rev.1), adopted by the Committee at its 1st meeting held on 2 October 2018, specifically refers to the General Assembly resolution mentioned above. In paragraph 3 of the note, it is stated that "[i]n accordance with the established practice of the Committee and pursuant to paragraphs 3 (c) and (d) of the annex to General Assembly resolution 58/316 on further measures for the revitalization of the work of the General Assembly, immediately following the introduction of reports, interactive dialogues and a 'question time' will be held with heads of departments and offices, representatives of the Secretary-General, special rapporteurs and other special mechanisms as part of the formal proceedings of the Committee."

In accordance with the established practice, the Secretariat also relies on other relevant resolutions of the General Assembly and relevant resolutions of the Human Rights Council in preparing the above-mentioned list. These resolutions are indicated in the list mentioned above and, more specifically, next to the name of each special procedures mandate holder or member of a special mechanism. In the case of the Commission of Inquiry on Burundi, the Human Rights Council, by its resolution 36/19 referred to earlier, "request[ed] the Commission [of Inquiry on Burundi] to present an oral briefing to the Human Rights Council at its thirty-seventh and thirty-eighth sessions, and a final report during an interactive dialogue at its thirty-ninth session and at the seventy-third session of the General Assembly". As the Human Rights Council specifically requested the Commission to present a final report during an interactive dialogue at the seventy-third session of the General Assembly, and as the interactive dialogue referred to in resolution 36/19 normally takes place in the Third Committee, the Secretariat, in accordance with the established practice, included the Chair of the Commission in the list dated 2 October 2018.

In a previous instance, the Chair of the Commission of Inquiry on Burundi was included in the "Provisional list of special procedure mandate-holders and other experts scheduled to make presentations to the Third Committee of the General Assembly at its seventy-second session", dated 26 October 2017. The Third Committee approved the revised list, which included the Chair of the Commission of Inquiry on Burundi, at its 1st meeting held on 2 October 2017. Thereafter, the Chair of the Commission of Inquiry on Burundi participated in the interactive dialogue that was held at the 33rd meeting of the Third Committee held on 26 October 2017.

Accordingly, the Secretariat included the Chair of the Commission of Inquiry on Burundi in the "Provisional list of special procedure mandate-holders and other experts scheduled to make presentations to the Third Committee of the General Assembly at its seventy-third session", dated 2 October 2018, particularly on the basis of paragraph 3 (c) of the annex to General Assembly resolution 58/316, Human Rights Council resolution 36/19 and the established practice.

Second question

The second question is formulated as follows: "What are...the legal basis for the dialogue of the aforementioned Commission with the Committee in view of paragraph 22 of Human Rights Council resolution 39/14 of 28 September 2018."

Paragraph 22 of Human Rights Council resolution 39/14 of 28 September 2018 entitled "Situation of human rights in Burundi" provides as follows: "Decides to extend the mandate of the Commission of Inquiry on Burundi in order for it to deepen its investigations until it presents a final report to the Human Rights Council during an interactive dialogue at its forty-second session and to the General Assembly at its seventy-fourth session, and requests the Commission to present an oral briefing to the Council at its fortieth and forty-first sessions during an interactive dialogue".

We recall that, since the Commission of Inquiry on Burundi was established on 30 September 2016, the Human Rights Council has requested the Commission to submit a series of reports within a one-year term, including a final report at the end of each one-year term. Therefore, pursuant to resolution 33/24, the Human Rights Council requested the Commission to present, during the one-year period starting on 30 September 2016, an oral briefing to its thirty-fourth and thirty-fifth sessions, and a final report during an interactive dialogue at its thirty-sixth session, and to present that report to the General Assembly. In practice, the Commission provided an oral briefing at the thirty-fourth (13 March 2017) and thirty-fifth (15 June 2017) sessions and a final report at the thirty-sixth session (A/HRC/36/54, which was presented to the Council at its meeting on 17 September 2018). At the seventy-second session of the Assembly, the Commission presented the final report to the Third Committee at its meeting held on 26 October 2017 (A/C.3/72/SR.33, pp. 6–7).

Similarly, the Human Rights Council extended the mandate of the Commission for a period of one year by its resolution 36/19 and requested the Commission to submit a series of reports during that one-year period, namely, an oral briefing to the Human Rights Council at its thirty-seventh and thirty-eighth sessions, and then a "final report" during an interactive dialogue at its thirty-ninth session and at the seventy-third session of the General Assembly. In practice, the Commission presented an oral briefing at the thirty-seventh (13 March 2018) and thirty-eighth (27 June 2018) sessions and a final report at the thirty-ninth session (A/HRC/39/63, A/HRC/39/CRP.1, which were presented to the Council at its meeting held on 17 September 2018).

A similar format has been adopted by the Human Rights Council in its resolution 39/14, quoted above.

Therefore, each one-year period appears to have been a separate term with separate reporting requirements. In this regard, resolutions 36/19 and 39/14 are not incompatible as far as the reporting requirements are concerned, and resolution 39/14 does not have the effect of terminating or suspending the operation of resolution 36/19, including the request to present a final report during an interactive dialogue at the seventy-third session of the General Assembly.

Furthermore, as mentioned above, in its resolution 58/316, the General Assembly requested the Main Committees to hold interactive debates and panel discussions with experts from various fields, as appropriate. As a matter of practice, the Third Committee has implemented this request by allowing special rapporteurs and other special mechanisms to participate in interactive dialogues and a "question time". This practice is summarized in the note by the Secretariat entitled "Organization of the work of the Third Committee" (A/C.3/73/L.1/Rev.1). The relevant parts of this note were quoted above. In practice, the Chair of the

Commission of Inquiry previously participated in an interactive dialogue in the Third Committee on 26 October 2017.

Therefore, in response to the second question, in our view, there is a legal basis, in particular General Assembly resolution 58/316 and Human Rights Council resolutions 36/19 and 39/14, for the Third Committee to hold an interactive dialogue with the Chair of the Commission of Inquiry on Burundi during the seventy-third and seventy-fourth sessions of the Assembly, which is supported by the established practice.

(*Signed*) Stephen **Mathias**
Assistant Secretary-General
in charge of the Office of Legal Affairs